

1961

Public Defender System: The Los Angeles Story

Ellery E. Cuff

Follow this and additional works at: <https://scholarship.law.umn.edu/mlr>



Part of the [Law Commons](#)

Recommended Citation

Cuff, Ellery E., "Public Defender System: The Los Angeles Story" (1961). *Minnesota Law Review*. 1256.
<https://scholarship.law.umn.edu/mlr/1256>

This Article is brought to you for free and open access by the University of Minnesota Law School. It has been accepted for inclusion in Minnesota Law Review collection by an authorized administrator of the Scholarship Repository. For more information, please contact lenzx009@umn.edu.

Public Defender System: The Los Angeles Story

Ellery E. Cuff*

INTRODUCTION

It has often been stated that the public defender system has, like most of the services that government provides for the people, grown out of a pressing need. The need in this instance is to provide orderly and adequate legal counsel for indigent persons in criminal cases, as well as in certain types of civil cases.

It has also been pointed out that individual lawyers throughout the country perform a commendable service in protecting the rights of indigent defendants and in furnishing general legal services to indigents. Undoubtedly the heaviest responsibility in this area of professional service is borne by the private practitioner, with effective assistance from the various indigent defense panels and legal aid organizations maintained by local bar associations.¹ No monetary value can be attached to the work of this nature that is performed by responsible and dedicated lawyers in private practice, often at considerable personal expense; nor are the savings in the human dignity of indigents so served susceptible of being measured.

However, the safeguards provided in the sixth amendment to the federal constitution² would fail of practical application in a num-

*Public Defender, County of Los Angeles.

1. Address by Hon. Frank S. Hogan, District Attorney for New York County, at the 1960 Legal Aid Conference. See summary of address in *Prosecutor "Files Brief" for Indigent Defendant*, 19 LEGAL AID BRIEF CASE 58 (Dec. 1960).

While recognizing the worth of the legal aid provided by bar associations, Mr. Hogan pointed out the inherent limitations of such an approach to the problem of defending the indigent:

How then are we to meet our obligation to the indigent defendant?

The earliest approach, and still the most prevalent, has been assignment by the court of counsel to serve without compensation, either at random or, in the more refined versions of the system, from a panel.

I need not review before this association the inadequacies of this method. With all due honor to the many lawyers who have unselfishly and conscientiously devoted legal services of a high order to indigent defendants, I think it can fairly be stated that most students of the problem agree that the need is best met by the Voluntary or the Public Defender.

Id. at 60.

2.

In all criminal prosecutions, the accused shall enjoy the right to a

ber of jurisdictions in our land were it not for the protections afforded by the public defender system. A publication of the Los Angeles County Public Defender's Office has put it this way:

We have laws and rules governing the conduct of trials but who among you [the average layman or non-specialist] know what they are and *how to invoke a rule of law in your favor*? How would you feel alone and opposed by a powerful state—police officers and a skilled prosecutor who knows how to take advantage of every situation? To ask the questions suggests the answers. . . .

Our nation, under a government with its protection and limitation of power over the individual, has developed and thrived as no other in all history. Let us not carelessly whittle away [or fail to make fully operative in spirit] the very fundamental structure that made it great.³

Thus it has been argued that the sixth amendment, both in letter and in spirit, was designed to protect substantial human rights. The essence of these rights is that no person shall be denied a fair trial because he lacks funds. Under section 987 of the California Penal Code, the court must inform each criminal defendant of his right to counsel, but of course this only restates the problem for the indigent defendant. Mere knowledge of a right to counsel can be of little avail to the indigent defendant unless society is willing to take up his cause.

The role of the public defender in criminal cases has become a part of the administration of justice in this country only within the last fifty years, but the idea itself is a much older one. Spain had an officer corresponding to the public defender in the fifteenth century: "An attorney was provided *at public expense*, under the title of *advocate for the poor*, whose duty it was to defend the suits of such as are unable to maintain them at their own costs."⁴ However, careful research has failed to disclose whether this officer was independent of the prosecution or of the governing power of the state, which may have had a primary interest in insuring conviction of the accused.

Today the laws of Hungary, Argentina, France, Belgium, Mexi-

speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the *Assistance of Counsel* for his defense.

U.S. Const. amend. VI. (Emphasis added.)

3. LOS ANGELES COUNTY PUBLIC DEFENDER'S OFFICE, PROTECTIONS UNDER THE U.S. CONSTITUTION FOR THE INDIVIDUAL ACCUSED OF CRIME (rev. Jan. 1961).

4. 1 PRESCOTT, HISTORY OF FERDINAND AND ISABELLA 194, quoted in GOLDMAN, THE PUBLIC DEFENDER 9 (1917).

co, Norway, England, Denmark, and Germany make provision for some sort of public defender system, and in many of these countries the system has existed for a considerable time.⁵ It is not clear, however, whether the individual defenders in these countries are as independent as their counterparts in the United States.

I. HISTORIC BACKGROUND

As long ago as 1919, when Mayer Goldman published his brief but authoritative work, *The Public Defender*, the defense of indigents in certain countries had already developed beyond what has generally been attained today in the United States. Mr. Goldman, the leading advocate of the public defender system of his time, pointed out that Spanish law provided counsel to represent indigents in both civil and criminal cases. Under the Hungarian criminal code, the presence of the public defender was obligatory unless the defendant already had counsel. In Argentina, assignments of counsel to the defense of indigents were made through the bar. Belgium provided the indigent with the right to choose his own lawyer. Mexico's method was to provide for free public defense of its citizens. In Norway, it was felt that a system of providing for the defense of indigents through assignment of private lawyers by the court, with the expense borne by the state, offered a more adequate defense than a system of free counsel. In England, counsel assigned to defend the accused were paid by the government. Denmark utilized a panel of lawyers appointed by the king, with the court selecting counsel from this panel to represent defendants in public cases. The Netherlands made provision for the accused to have counsel assigned, and this provision was not restricted to indigents. And in Germany, an innocent person who had been unjustly punished could be compensated by the state—a concept of justice which seems advanced even in 1961!⁶

Inevitably, some of these practices for defense of the indigent have changed with the world-wide advancement in social consciousness that has, if anything, been accelerated by the two major world conflicts of the past half-century. But even from Mr. Goldman's perspective at the end of World War I, the public defender system appeared to be endowed with a predictable and significant future within the structure of our administration of justice.⁷ The trend toward public defense seemed certain:

The constant re-introduction of public defender bills in numerous state legislatures, the advancement of criminal jurisprudence, the grow-

5. LOS ANGELES CITY PUBLIC DEFENDER'S OFFICE, RESUME OF THEORY AND OPERATION OF PUBLIC DEFENDER SYSTEM 1.

6. See GOLDMAN, *op. cit. supra* note 4, at 10-14.

7. See *id.* at vii-ix (preface).

ing realization that society owes a duty to the "under-dog," the oft-recurring instances of legal injustice—all point inevitably to the goal of public defense.⁸

The latest directory of public defenders indicates that the system is making steady, rather than meteoric, progress in filling an acknowledged need of long standing;⁹ but that is the kind of growth more conducive to permanency. Much of this development has been inspired by careful observation of existing public defender systems which have effected substantial improvements in the administration of criminal justice.

That such improvements have been sorely needed is a fact that has never been more effectively expressed than by the somewhat Dickensian language of a justice of the Supreme Court of New York in 1916:

The poor man cast into prison, no matter how innocent, is helpless and hopeless. He cannot cry out to justice, for nobody hears his cry. He is the prey of the policemen, the captive of the jailor, the butt of other prisoners, the plaything of young lawyers. . . . As he is arraigned before the judge, he stares about the courtroom, but he sees no friend—no hope. Every technicality and delay and defense and avenue of escape known to the cunning of lawyers are available to the rich man indicted for crime [but the indigent without defense counsel] pleads guilty and disappears from human view. And this is the triumph of civilization—a triumph for those who have money; ignominy for those who have not.

The provision for a Public Defender should be imbedded in our statutes. No law could be more economical—none more humane.¹⁰

8. *Id.*, preface (2d ed. 1919).

9. According to BLISS, *DIRECTORY OF PUBLIC DEFENDERS* (1957), as of 1957 there were defender systems in operation in 15 states: California, Florida, Illinois, Indiana (state public defender), Massachusetts, Minnesota, Missouri, Nebraska, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island (state public defender), and Tennessee.

Within these states there were city public defender systems in five cities: Columbus, Long Beach, Los Angeles, St. Louis, and San Francisco City and County. In addition, there were voluntary defender systems in two cities: Boston and Philadelphia. In New York City, there was a criminal branch of the legal aid society.

The 1957 directory listed 70 county public defenders (including the one for San Francisco City and County) in the 15 states. The most phenomenal recent growth of the public system was experienced by Illinois in 1956–1957, when eight new county defender offices were established. Since publication of the 1957 directory, another defender office has been established in California (the San Bernardino County office, in 1959–1960); it is assumed that additional defender offices have been opened in other states within the past four years.

Progress has also been made with regard to investigative facilities. In 1957, there were investigators in the defender offices in Shelby County (Memphis), Tennessee; Cook County (Chicago), Illinois; Alameda County (Oakland), California; San Francisco City and County; San Joaquin County (Stockton), California; Los Angeles County; New York City; and Philadelphia.

10. Howard, *Foreword to GOLDMAN, op. cit. supra* note 4, at iii–v.

The indigent defendant of 1961 does not usually face so bleak a prospect as did his forebear of 1916, but in certain respects there has been little, if any, change for the better. It is still generally true that once a man has been convicted and imprisoned, no further investigation is made on his behalf. In fact if information crops up from time to time, indicating that a mistake was made in convicting the prisoner, it is disparaged or even suppressed. Of course it is only natural that those in power would not try to prove that they were wrong.

Thus, if during the past half-century we have made great strides toward the goal of equal justice for all, it is clear that our journey is far from complete. In describing the challenge to lawyers to establish effective community agencies for legal aid to the indigent, Harrison Tweed fell back on the words of Chief Justice Charles Evans Hughes to convey the sense of great public responsibility that motivated the early advocates of the defender system in this country. The present writer can do no better than to follow Mr. Tweed's example:

Whatever else lawyers may accomplish in public affairs, it is their privilege and obligation to assure a competent administration of justice to the needy, so that no man shall suffer in the enforcement of his legal rights for want of a skilled protector, able, fearless, and incorruptible.¹¹

II. JUSTICE FOR THE INDIGENT CAN NOT BE CASUAL

In 1958, Judge Leonard Moore of the second circuit stated before the 36th annual Legal Aid Conference in Pasadena that, in his experience in the federal courts, he had often had indigent defendants appearing before him. In many of those instances the court, desiring that the accused have the best of legal counsel, would appoint an attorney who happened to be in the courtroom—often an outstanding attorney—to defend the accused. The court would then observe the spectacle of the attorney taking the accused to a corner to talk to him for five minutes, returning, and entering a plea of guilty. The judge said in effect that he could not imagine a client who had paid a substantial fee being “so summarily disposed of,”¹² with no inquiry made of the prosecuting attorney or of the police as to the extent and seriousness of the crime, or as to the conditions surrounding its commission—or whether a crime had in fact been committed. Judge Moore concluded by criticizing very severely the general conduct of the de-

11. Tweed, *Foreword* to BROWNELL, *LEGAL AID IN THE UNITED STATES*, at iii (1951) (quoting Charles Evans Hughes).

12. Cuff, *A Delegate Views The Defender Program*, 17 *LEGAL AID BRIEF CASE* 26, 27 (Oct. 1958) (quoting Judge Moore).

fense of indigents where there is no organized defender program under legal aid (or public) sponsorship.

Accusation is all too often the equivalent of proof in the minds of the public. One accused of crime frequently needs counsel from the moment he comes into the hands of the police. Indeed, it is not too much to say that his case¹³ may, for all practical purposes, be determined prior to the time when he comes before a judge to have his rights protected through court procedures. Between the arrest of the accused and the appearance of an attorney there is a gray area of activity and waiting: If the accused has money, he gets an attorney right away; if he does not have money, he has to wait for further court procedures before an attorney is appointed for him.

The prosecutor is a public servant invested with the powers of the state. It is within his discretion to determine whether a criminal prosecution shall go to trial. Representing the whole people, he has the respect and confidence of the courts. He is legal advisor to the grand jury, attends its sessions, and presents charges against accused persons for its action. Above all, he has far-reaching powers and great resources at his disposal for prosecuting a case.

Without some protective defense system, only the prosperous (or the occasional person accused of a crime of sufficiently sensational nature to attract the voluntary services of an attorney who is interested in building a reputation) can command a defense at all comparable in efficiency to the machinery of prosecution existing in the office of the district attorney.¹⁴

III. IMPARTIAL SEARCH FOR THE TRUTH

Ideally, the public defender system should provide sworn public counsel, possessed of ability, experience, and integrity, in place of assigned lawyers who are often inexperienced in the criminal practice and, therefore, not fully competent in its arts.¹⁵ A lawyer

13. The Los Angeles County Public Defender Office defines "case" as one would expect in a private attorney's office; the term includes the original appointment to represent the defendant, interviews, court appearances, and whatever else is necessary to carry the proceedings through to final disposition.

14.

The right of counsel exists not merely for the innocent and the unjustly accused. The test is whether it is accorded to the least deserving. . . . [It is] the privilege of every indigent defendant . . . as a matter of right.

Address by Hon. Frank S. Hogan, District Attorney for New York County, in 19 LEGAL AID BRIEF CASE 58, 60 (Dec. 1960).

15. In the interest of securing a defender with status equal to that of the district attorney, leading advocates of the public defender system originally contended that the defender should be an elected official. However, the trend has been toward an appointed defender. The latter development

assigned without compensation may render indifferent service. Actual equality before the law requires an impartial search for the truth that is not possible when all the means for ascertaining the facts are placed solely at the disposal of the prosecution. Advocates of the public defender system believe that it is as much the function of the state to protect the innocent as to convict the guilty—that the “presumption of innocence” requires the state to defend, as well as to prosecute, those accused of crime.

The duty of a public defender is not only to protect the innocent, but also to insure that the guilty person is fairly punished rather than overpunished. In practical experience, a large proportion of criminal law involves the prevention of overpunishment. Therefore, the defender’s office should be represented in every phase of the proceedings wherein the prosecutor appears,¹⁶ from the preliminary hearing before the magistrate on through trial and, where advisable, through appeal. When an accused is represented by the defender a different complexion is cast upon the proceedings, for the defender is a public official with the dignity of the state behind him, equipped with a staff of skilled investigators who are capable of producing all evidence favorable to the accused.¹⁷

The benefits to be derived from the public defender system are considerable. Among the most important are: (a) increased confidence in, and respect for, the law; (b) improved disposition of cases before the criminal courts; (c) more effective safeguards for

has stemmed from a feeling that a public defender is less apt to be “political,” more apt to be “professional”—a true career official—if he is appointed under civil service procedures rather than elected.

16. It has even been suggested that the defender should be able to go before the grand jury while a proceeding is pending before that body.

17.

The attorney representing a defendant may have an opinion as to his guilt or innocence. However, the investigator should have no preconceived opinion as to the guilt or innocence, but should approach all facets of the case with an open mind and relate to the attorney statements and facts exactly as he receives them. It is advisable to evaluate the witness for the benefit of the attorney.

Each investigator is admonished to look upon a defendant, regardless of the heinousness of the crime of which he stands accused, as upon another human being who badly needs assistance. His personal feelings and relationships with either the alleged victim or defendant should not be permitted to prejudice his views or his actions in connection with his handling of the investigation of the defendant’s case.

An investigator checks out fully each statement made to him. No more credence is accorded the statement of a person of position than one made by a person of lesser economic or social status. In this connection the weight of a statement by a peace officer is judged by the same standards as that of any other witness.

Address by Edward N. Bliss, Jr., Chief Investigator for Los Angeles County Public Defender, Feb. 1961. And see generally BLISS, *DEFENSE INVESTIGATION* (1956).

the accused through honest and able representation by specialists, with a consequent minimization of excessive punishments (that is, sentences not commensurate with the crimes involved); and (d) a fundamental advance in the administration of justice at a decreased cost per case processed.¹⁸

IV. DEFENDER WOULD MINIMIZE INEQUITIES

It cannot be effectively contended that adequate help is available for indigent defendants without the public defender system. Nor is it the thesis of this Article that the impecunious defendant can be put on an equal footing with the well-to-do through the public defender system.¹⁹ A man of wealth who is accused of crime could perhaps afford to pay his counsel to investigate not only the background, record, biases, and prejudices of every witness who might testify for or against him, but also the personal histories and predilections of jurors who might have the duty of passing upon his guilt or innocence. This would not be doing anything unethical but merely would, in many instances, place the defense counsel in an advantageous position to argue his client's cause within the realm of a juror's experience.

More widespread use of the public defender system would do much to minimize the inequities which continue to exist between those who can and those who cannot afford adequate defense counsel. A leading authority, commenting on this as-yet-unsolved problem, recently wrote:

In 1947 an estimated 97,000 persons who could not afford a lawyer faced prosecution on serious criminal charges of a type classified in many states as felonies. Not more than 22,000 were assisted by public or voluntary defender organizations. Approximately 36,000 received the frequently inadequate services of assigned private counsel, and at least 38,000 went without any form of legal aid whatever.²⁰

18.

Although . . . [the public defender] must be a lawyer with considerable trial experience, we believe that in the city and county of San Francisco he is basically an administrator. His duty is to set up and maintain an efficient organization of trial lawyers and to supervise the work of each.

BAR ASSOCIATION OF SAN FRANCISCO, COMMITTEE REPORT REGARDING OFFICE OF PUBLIC DEFENDER 3 (June 1955).

19.

The good citizen will readily accord every legal safeguard of the accused to a bank president or an archbishop, or to his friends and neighbors. Indeed, he is quite ready to give the affluent racketeer, well represented by counsel, a sporting chance to "beat the rap." But he is inclined to be impatient of the law's delays in the case of the less fortunate criminal.

Address by Hon. Frank S. Hogan, *supra* note 14, at 59.

20. FELLMAN, *THE DEFENDANT'S RIGHTS* 125 (1958).

Opponents of the public defender system frequently mention three alternative plans for providing defense for the indigent: (a) the local bar association may maintain a panel of attorneys who defend indigents on a voluntary basis; (b) legal aid societies or local charitable organizations may undertake the defense of indigents; (c) a system may be established whereby the trial judge appoints counsel to defend the indigent,²¹ counsel to be compensated by the local governmental unit. As we shall see shortly, none of these plans is an adequate substitute for the public defender system.

V. INEXPERIENCED COUNSEL CAN NOT MATCH PROSECUTION

Reputable and busy lawyers generally find it impractical to volunteer their services for unproductive and unremunerative criminal work. As suggested by Judge Moore, when an experienced attorney is pressed into the service of an indigent by a well-meaning court, the attorney may well devote so little time to the case that his experience is of scant value to the indigent. No amount of talk of "professional responsibilities" will ever succeed in obscuring one hard fact: All a lawyer has to sell is his time! And it is no answer to this dilemma to give the cases to those lawyers whose time is not so valuable. No matter how eager and industrious a young lawyer may be, he is seldom a match for the able, adroit, powerful, and experienced prosecutor whom he is likely to meet in a criminal action. Furthermore, he is rarely in a position to pay for the investigation that is often needed.

In the typical system for assigning counsel, the court makes its selections from those attorneys who happen to be in attendance at the time or who are present for the purpose of being assigned. With or without compensation, most lawyers in private practice do not enjoy the atmosphere of the criminal court. Even where compensation is provided, it is frequently insufficient to induce the as-

21.

Wherever . . . [the public defender system] may be established it should be on a firm and honorable basis. It should be an independent branch of our government, that is, the public defender should not hold office purely at the will of a judge or district attorney. He should have the same freedom of action in the exercise of his judgment as a private attorney. I think the great weakness of the public defender system in some areas springs from the fact that he serves at the will of the particular judge before whom he must appear. He has to second guess the judge in order to stay in his good grace. This is wrong because a public defender and a judge may disagree. Reasonable men do disagree.

CUFF, *HOW THE PUBLIC DEFENDER SYSTEM WORKS IN LOS ANGELES COUNTY* 6 (1953).

signed counsel to devote as much time and effort to the case as he would if the defendant were a well-to-do client. From this one might conclude that, whatever the qualitative shortcomings of the assigned-counsel system, at least it has the virtue of being inexpensive. To the contrary, the aggregate of fees paid from public funds through the assignment method in a given community may be a greater expense to the community than operation of a public defender office.²² California, with one of the best public defender systems in the country, can show a cost-per-case record for cases handled in defender offices that is extremely low in view of the results achieved.²³ Advocates of the public defender system present a case of considerable merit with their claim that the defender office brings about immeasurable annual savings in every county where the office is in operation.²⁴

VI. FLAWS IN THE SYSTEM OF ASSIGNED COUNSEL

In the writer's view, the following comment on the system of assigned counsel is both novel and sound:

The entire system of assigning counsel is fundamentally wrong from every standpoint It is as unfair to counsel as it is to the accused, wholly apart from the question of the character and ability of counsel. A lawyer should not be required to devote his time and

22. The 1960-1961 budget for the Los Angeles County Public Defender Office was \$713,294. While this is a large sum of money by any standard, when it is considered that Los Angeles County contains more people than most entire states, it will be seen that the cost of providing defender services is relatively low. The tremendous influx of people, coupled with the general inflationary trend, has vastly increased the expenditures of this office in recent years. The budget for the first year of operation, 1913-1914, was \$16,500 for 1928-1929, \$50,405.

23. The following are the 1954-1955 figures for representative California public defender offices:

<i>County</i>	<i>Cost Per Case</i>
Alameda	\$42
Inyo	72
Orange	43
Riverside	59
Sacramento	29
Sutter	31
Tulare	17
Yuba	19
Long Beach City	6

STATE OF CALIFORNIA, [1960-1961] REPORT OF ASSEMBLY INTERIM COMMITTEE ON CRIMINAL PROCEDURE 105 (Jan. 1961).

24.

[The] office of public defender expedites trial and disposition of cases and, by eliminating unnecessary trials and waiving jury trials where that can be legitimately done, effects tremendous annual savings to the county, far in excess of the expense of maintaining the office of public defender.

Ibid.

professional skill gratuitously to the defense of a criminal prosecution any more than the accused should be dependent upon the services of counsel working without compensation.

There is no authority which can compel a physician or other professional man to render services gratuitously, nor can we conjure up the possibility of a merchant being forced to donate any portion of his stock to the needy.²⁵

The foregoing quotation was taken from Mayer Goldman's book, published in the early part of the century, but the keen edge of Mr. Goldman's criticism has not been dulled by the passage of time. Professor David Fellman, a contemporary authority on the rights of criminal defendants, recently pointed out some serious deficiencies in the appointed counsel system:

Certainly the system of appointed counsel has grave flaws. The appointment of defense counsel by judges is generally done in an altogether haphazard way. Very often a lawyer is designated for the service merely because he happens to be in the courtroom at the time the judge has to make his decision. Many judges seem to prefer to appoint young and inexperienced lawyers whose time is not very valuable and who will not resent being asked to serve [and some judges appoint young attorneys purely to give them experience]. The most promising solution to the whole problem lies in the hands of the local bar associations, through the systematic preparation of panels of lawyers experienced in criminal law work, from which judges can make selections.²⁶

This writer could not agree more with Professor Fellman's assessment of the problem, but the solution he proposed seems questionable. In the last analysis, are not these flaws inherent in any system of appointed counsel?

VII. LEGAL AID PROGRAMS

Legal aid programs do not afford a sufficient substitute for the public defender system. While it is true that a legal aid organization may have one or two highly capable and experienced men at the top, the individuals destined to carry the brunt of the workload are young attorneys who are starting out and who will be affiliated with the organization for only a short period of time. A new lawyer is hardly qualified to meet career men steeped in the art of criminal trial work, such as are to be found in many of our prosecutors' offices. Experience aside, most legal aid organizations suffer from a chronic lack of funds; certainly, few such organizations can afford to maintain a staff of skilled investigators—a growing practice of defender offices.

25. GOLDMAN, *op. cit. supra* note 4, at 17.

26. FELLMAN, *op. cit. supra* note 20, at 125.

Professor William Beaney, a leading authority on the right to counsel, has stressed the role of the public defender in perfecting the rights of indigents under the sixth amendment:

The public defender is a public official, having assistants and a clerical staff, whose duty it is to defend indigent persons accused of crime. In addition, statutes may require that he serve indigents making certain types of legal claims, particularly wage claims.²⁷

As a matter of principle, the accused should not be dependent upon charity for presentation of an adequate defense. The accused should be represented by a sworn public official who has the duty, as well as the power and standing, fully to protect the vital interests of the accused.

VIII. BEFORE THE BEGINNING

The office of public defender was first established in the United States in March, 1912, when Miss Kate Barnard, then Commissioner of Charities and Corrections in Oklahoma, appointed Dr. John H. Stolper as "General Attorney for the Commissioner of Charities and Corrections and Public Defender of the State of Oklahoma."²⁸ The appointment stemmed from Miss Barnard's not unfamiliar feeling that too many defendants were pleading guilty in order to secure lesser sentences, either because they had no counsel or because they had no confidence in the counsel assigned to them. Though the reasons for the creation of the first public defender office are easily recognizable, the functional characteristics are scarcely so; Dr. Stolper's duties differed widely from those of the present-day defender.

The prototype of the contemporary public defender emerged on January 6, 1914, when Walton J. Wood became the first public defender for Los Angeles County.²⁹ The following year, a separate public defender was appointed for the police courts of the city of Los Angeles. During 1915, 12 public defender bills were introduced in various state legislatures.

Prior to the advent of the public defender system, it was generally assumed that the prosecutor was in the best position to protect the rights of the accused. Soon after the introduction of the public defender system in Los Angeles County, even the district attorney was willing to admit that the scruples of a conscientious prosecutor were no substitute for the undivided loyalty of a skilled advocate. In a letter to Mr. Wood, the district attorney wrote:

27. BEANEY, *THE RIGHT TO COUNSEL IN AMERICAN COURTS* 218 (1955).

28. GOLDMAN, *op. cit. supra* note 4, at 81.

29. *Id.* at 82.

You are performing a duty which this office has attempted to perform in safeguarding the rights of the defendant, but I believe under the circumstances your position gives you a better opportunity to perform that duty than the prosecutor has.³⁰

In similar vein, judges are wont to say that they can adequately protect the rights of the defendant. This may be true in very limited circumstances, but one is entitled to ask how a judge can ensure that a witness is properly cross-examined without investigating the background of the witness and determining what further knowledge he has, or without first hearing the story of the defendant. Thus it seems highly unlikely that a judge can afford adequate protection of the defendant's rights—and entirely possible that a judge might overlook the very crux of the defense.

IX. THE LOS ANGELES STORY

A complete picture of the Los Angeles development of the public defender system requires consideration of two major defender offices—the Los Angeles County Public Defender Office and the City of Los Angeles Public Defender Office—serving the nation's second largest metropolitan area, with a county population of 6,170,537 and a city population of 2,513,746.³¹ In addition, the Long Beach City Public Defender serves the needs of a population of several hundred thousand, peripheral to the Los Angeles heartland. When the Los Angeles County Public Defender Office began operation in 1914, pursuant to provisions in the original county charter,³² the state of California was already showing

30. Letter from Hon. John D. Fredericks, District Attorney of Los Angeles County for the year 1914, quoted in GOLDMAN, *op. cit. supra* note 4, at 39.

31. Population Research Section of the Regional Planning Commission of Los Angeles County (Jan. 1961 figures). In 1914, when the county defender office was inaugurated, the population was 790,000. By 1930, the figure had jumped to 2,208,492, and in 1945 it was 3,385,022. The 1980 projection for the county is 10,600,000. *Ibid.*

32. The pertinent provisions are as follows:

Sec. 23: Upon request by the defendant or upon order of the court, the Public Defender shall defend, without expense to them, all persons who are not financially able to employ counsel and who are charged, in the superior court, with the commission of any contempt, misdemeanor, felony or other offense. He shall also, upon request, give counsel and advice to such person, in and about any charge against them upon which he is conducting the defense, and he shall prosecute all appeals to a higher court or courts, of any person who has been convicted upon any such charge, where, in his opinion, such appeal will, or might reasonably be expected to, result in a reversal or modification of the judgment of conviction.

He shall also, upon request, prosecute actions for the collection of wages and of other demands of persons who are not financially able to employ counsel, in cases in which the sum involved does not exceed

symptoms of the surging population growth to come, bringing into focus the imperative need for services of the kind that defender offices can provide. The city council of Los Angeles quickly recognized the value of the defender system and in 1915 established the office of Police Court Defender, a designation which was changed to its present form in April, 1926,³³ following creation of the Los Angeles Municipal Court.

\$100, and in which, in the judgment of the Public Defender, the claims urged are valid and enforceable in the courts.

He shall, upon request, defend such persons in all civil litigation in which, in his judgment, they are being persecuted and unjustly harassed.

The costs in all actions in which the Public Defender shall appear under this section, whether for plaintiffs or for defendants, shall be paid from the County Treasury, at the times and in the manner required by law, or by rules of the court, and under a system of demand, audit and payment, which shall be prescribed by the Board of Supervisors. It shall be the duty of the Public Defender, in all such litigation, to procure, if possible, in addition to general judgments in favor of persons whom he shall represent therein, judgments for costs and attorney's fees, where permissible, against the opponents of such persons, and collect and pay the same into the County Treasury.

Sec. 55: The District Attorney, Public Defender, County Counsel, and their Deputies, shall not engage in any private law practice, and they shall devote all their time and attention during business hours, to the duties of their respective offices.

CHARTER OF THE COUNTY OF LOS ANGELES art. IV (ann. ed. 1959). The charter originally became effective on June 2, 1913.

33.

Section 1. Section 2 of Ordinance No. 54,691, as amended by Ordinance No. 75,366, entitled "An Ordinance creating the office of Public Defender of the City of Los Angeles, and prescribing the powers and duties pertaining thereto," approved April 22, 1926, is hereby amended to read:

Section 2. The Public Defender of the City of Los Angeles shall have the following powers and duties:

The Public Defender shall represent, counsel and defend any indigent persons charged with the commission of any misdemeanor in the Municipal Court of the City of Los Angeles when requested by such indigent person if in custody, or by order of Court if such person be not in custody.

The Public Defender shall upon request give legal counsel and advice in civil matters to any indigent person resident within the City of Los Angeles.

The Public Defender may represent indigent persons, whether plaintiffs or defendants, in the civil divisions of the Municipal Court of the City of Los Angeles, upon satisfactory proof of the necessity of such representation to preserve, protect, defend or assert any legal or equitable right of such person, or upon order of Court, and upon order of Court only, may represent such person, in the Civil and Appellate Division of the Superior Court of Los Angeles County.

An "indigent person" is defined to be any person, who, in the judgment of the Public Defender, is not able financially, to secure the services of competent counsel out of his present or reasonably anticipated resources, considering the need and urgency of the matter, the intricacies of the questions involved, the likelihood of free services being given by a private attorney, and the financial necessities of the applicant and his family.

In 1921, the legislature of the state of California, encouraged by the success of the pioneering effort in Los Angeles, enacted legislation which enabled each county to create a public defender office.³⁴ Today, 18 counties in California—in addition to Los Angeles County and the City and County of San Francisco—have public defender systems in operation.

The Los Angeles County Charter provides for an appointive defender;³⁵ under the state enabling legislation, the county board of supervisors determines at the time of establishing the office whether the defender is to be elected or appointed. In Los Angeles County, the defender and all his deputies occupy career professional positions,³⁶ enjoying civil service status which goes far toward ensuring dedicated, full-time public service. The language of the "duties" section³⁷ of the state enabling legislation closely parallels that of the Los Angeles County Charter under article IV, sections 23 and 55.

A. RESPONSIBILITY IN CRIMINAL CASES

The jurisdiction and duties of the Los Angeles County Public Defender Office are summarized in its annual report for 1958—

Los Angeles, Cal., Public Defender Ordinance, No. 112,461, April 22, 1926.

34.

The board of supervisors of any county may establish the office of public defender for the county. Any county may join with one or more counties to establish and maintain the office of public defender to serve such counties.

CAL. GOV'T CODE § 27700. Sections 27701–11 of the code cover various items of consequence to the proper functioning of a defender office, including: qualifications, determination of appointment or election, appointment to serve at will, appointment of defender of two or more counties, election, devotion of full time to duties of office, defense of persons accused of crime, duties, office, furniture and supplies, briefs on appeal, filing of an annual report, and salary.

35. The defender is appointed by the county board of supervisors from an eligible civil service list, consisting of the three persons certified by the civil service commission as standing highest on the civil service examination, pursuant to subdivision 1, section 11, article III of the Los Angeles County Charter. *Cf. People v. McAleer*, 33 Cal. App. 135, 164 Pac. 425 (1917).

36. The Los Angeles County Public Defender Office presently has a complement of 71 persons:

1 (Chief) Public Defender,

1 Chief Deputy Public Defender,

49 Deputies Public Defender (all members of the Bar, practicing before the courts),

9 Investigators (including the Chief Investigator), and

11 Supporting personnel, including a law clerk, secretaries, stenographers, and information personnel.

When the office opened for business on January 2, 1914, the staff was comprised of the Public Defender, two deputies, and one secretary.

37. CAL. GOV'T CODE § 27706.

1959.³⁸ The county charter authorizes the public defender—either upon request by the defendant or upon court order—to represent persons accused of any criminal offense triable in the Superior Court who are financially unable to employ counsel.³⁹ State law has enlarged this to include representation “at all stages of the proceedings, including the preliminary examination.”⁴⁰ Responsibility for preliminary hearings held within the City of Los Angeles was taken over from the city by the county defender’s office on January 2, 1959.

Section 5054 of the Welfare and Institutions Code provides that in proceedings against the mentally ill, the public defender may be appointed. Section 5511 of the same code provides that upon court order it becomes mandatory for the defender to represent persons in sex psychopathy proceedings.

Section 4852 of the Penal Code provides that the public defender shall represent persons who, after conviction of a felony and consequent imprisonment, seek a pardon and restoration of civil rights. Both state law and county charter provide, in identical terms, that the public defender shall prosecute all appeals where, in the opinion of the defender, such appeal will (or might reasonably be expected to) result in a reversal or modification of the judgment of conviction.

B. RESPONSIBILITY IN CIVIL CASES

By county charter and by state law it is the duty of the public defender to collect wages and other claims for indigent persons where the amount involved is \$100 or less, and also to represent such persons when it appears that they are being persecuted or unjustly harassed. In practice, the preponderance of civil cases involve gaining the release of wages from attachment, a service which not only reduces the anxiety of the hardpressed wage earner but also keeps his family off the county’s public welfare rolls. The defender also has authority to appeal civil cases when, in his judgment, errors have occurred in the trial court resulting in a miscarriage of justice.

38. [1958–1959] PUBLIC DEFENDER OF LOS ANGELES COUNTY ANN. REP. 1–3.

39. The number of criminal cases handled by the Los Angeles County Public Defender Office is large, and ever-increasing:

1951–1952	4,786 cases
1956–1957	10,878 cases
1957–1958	14,280 cases
1958–1959	18,937 cases
1959–1960	23,626 cases

The foregoing “cases” include preliminary examinations, arraignments, pleas, trials, probation hearings, violation of probation hearings, modification of probation, sex psychopathy hearings, and appeals.

40. CAL. GOV’T CODE § 27706.

Extreme care is exercised to ensure that only persons who actually need public assistance are accepted by the civil division of the defender's office; those not eligible are referred to other agencies or to private attorneys. Thus there is little, if any, basis in fact for the objection that the public defender system takes clients away from private practitioners. As this writer pointed out on another occasion:

[Even after the court appoints the public defender to represent a purported indigent] we make a careful inquiry as to his financial status If it appears that he has any means which would interest a private attorney, we direct that he get his own attorney There is not much danger of people of means being defended by the public defender for I believe that 90% of those charged with serious crime come from the ranks of those who have no wealth, and those who can hire their own attorneys do so by virtue of aid given by relatives and friends.⁴¹

C. PROFESSIONAL STATUS OF DEFENDERS

The county charter and the state law have many commendable features. In combination, they give the defender approximately the same latitude and independence as a private attorney. The defender need not fear the displeasure of the district attorney or even the judge. Appeal may be taken by the defender where, in his opinion, a reversal or modification of judgment might reasonably be expected; thus the right to appeal does not depend upon the will or caprice of the judge or prosecuting attorney, both of whom may have very decided opinions as to the guilt of an accused. The standards of ethics followed by the Los Angeles defenders—and by defenders throughout California—are those of the American Bar Association, local bar associations, and the state professional code.

Opponents of the public defender system have contended that a public defender might be casual toward his work, that he might be influenced by the district attorney to the point of being subservient to the prosecution, or that he might be complaisant in a way minimizing his effectiveness. Such has not been the experience of this writer or, so far as is known, of any public defender in California. Defenders in this state have reputations for fighting with fully as much zeal and skill as any private attorney or prosecutor. They are vitally concerned with developing their own professional skills as attorneys, and they apply those skills on behalf of their indigent clients with both competence and dedication.

41. CUFF, *op. cit. supra* note 21, at 4.

D. QUALITY OF PERFORMANCE

During the past 45 years, many of the judges assigned to the Los Angeles criminal courts from other areas of California have accepted their assignments with decided views against the public defender system, feeling that—with the aid of responsible prosecutors—they could sufficiently protect the rights of the accused. Almost to a man, after a few months' experience with the local public defenders, they have returned to their home jurisdictions firmly sold on the public defender system. Likewise, many judges of varying degrees of prominence from other parts of the United States have watched the local defenders in action while on a "busman's holiday" in the Los Angeles area, sitting in with the local judges during the course of trials. Although some of the visiting judges have been initially vociferous in their opposition to the public defender system, they have almost invariably left with the highest praise for the system. The Los Angeles defenders have not engaged in self-advertisement, but have preferred to let the quality of their work speak for itself.

X. FUTURE DEVELOPMENTS IN THE PUBLIC DEFENDER SYSTEM

The noted New York attorney, Harrison Tweed, recently paid tribute to the continually increasing acceptance of the public defender system:

The third approach has been the appointment of a so-called public defender—a lawyer selected non-politically for full or part-time work and duly compensated for his services out of tax revenues. The efficiency of this system has been generally, but not universally, acknowledged. Its development has been delayed by the outcry that it smacks of communism and leads to the socialism of the legal profession. Reluctantly, I must admit that lawyers as well as laymen have visualized this hobgoblin. Happily this opposition is diminishing as recent decisions of the courts and the mounting pressure to demonstrate the soundness and workability of our American way of life impress the Bar and the public with the need.⁴²

It seems certain that the public defender system will be further extended and more fully developed, but into what areas of legal activity will this movement be directed? Where are unprotected rights of defendants to be found today?

42. Tweed, *Foreword to SPECIAL COMMITTEE TO STUDY DEFENDER SYSTEMS, EQUAL JUSTICE FOR THE ACCUSED* 5-6 (1959).

A. THE FEDERAL COURTS

Throughout the country there has been advocacy of a federal public defender system to serve the federal courts.⁴³ Legislation will undoubtedly be introduced in 1961, as it has been during past sessions of Congress. That the present system of court-appointed counsel for indigent defendants before the federal courts does not provide fair and adequate representation is brought out clearly in a recent congressional committee report.⁴⁴ One does not have to look far to find the primary reason for the inadequacy of the present system:

Lawyers appointed by federal judges to represent indigent defendants in criminal prosecutions have never been allowed compensation by the government, and Congress has always refused to enact legislation authorizing the payment of even modest fees, though proposals of this sort have been made many times. . . . The federal courts and most state courts agree that as officers of the court lawyers can be obliged to serve without fee.⁴⁵

The inadequacy of the present program for defending indigents before the federal courts has been widely recognized, but it is especially apparent to those who have been concerned with the operation of the program in the great population centers where most of the federal cases involving indigents arise.⁴⁶ For these metropolitan areas, at least, the proposed federal public defender system represents a major breakthrough in the administration of justice—hopefully in the very near future.

B. MISDEMEANORS—A VACUUM TO FILL

Some of the most serious crimes are designated as misdemeanors. The penalties that may be imposed for certain misdemeanors exceed the penalties for many felonies.⁴⁷ In California, "high-grade" misdemeanors—those in which the penalty could exceed six months' imprisonment—were originally handled by the superior courts. With the creation of the municipal court system in 1926, however, the municipal courts were given jurisdiction of all high-grade misdemeanors (excepting the offense of contributing to the delinquency of a minor). This shift in jurisdiction was highly unfortunate from the viewpoint of indigent defendants, for

43. See STAFF OF HOUSE COMM. ON THE JUDICIARY, 86TH CONG., 2D SESS., REPRESENTATION FOR INDIGENT DEFENDANTS IN FEDERAL CRIMINAL CASES (Comm. Print 1960).

44. *Ibid.*

45. FELLMAN, *op. cit. supra* note 20, at 125.

46. Interview With Harry L. Hupp, Chairman of the Federal Indigent Defense Committee of the Los Angeles Bar, Jan. 1961.

47. [1959-1960] CITY OF LOS ANGELES PUBLIC DEFENDER ANN. REP. 1.

the services of the county public defender in California are limited to offenses triable in superior court. Thus far, in only four areas of the state are public defender services provided in misdemeanor cases.⁴⁸ An experienced observer of the criminal scene has said that "there is a greater possibility of miscarriage of justice at the misdemeanor level than at the felony level."⁴⁹ This writer would go further and say that if the right to counsel is to have meaning, persons charged with misdemeanors must be afforded full defense protections.

C. BETWEEN ARREST AND APPOINTMENT OF COUNSEL

The period elapsing between the time of arrest of an accused and the time he gets an attorney is fraught with danger for the accused. If he has money, he secures the services of an attorney immediately and is protected from physical or mental coercion; he is advised not to dissipate his defense by letting himself be led into well-meaning conversation which may be damaging to his cause. If the accused is without money, however, he has to wait for whatever legal counsel the jurisdiction may afford. In many jurisdictions, this means that he is without counsel until a court has considered his problem. Or he may act upon the advice of a police officer whose sole interest is to dispose of his case—in a way not necessarily in the best interests of the accused. This "gray area" in the administration of justice presents a problem which those interested in providing adequate defense for the indigent have yet to resolve; it is major unfinished business.

CONCLUSION

The public defender system presents no panacea for criminal defendants. Other systems of defense may well be more suitable for certain localities. Serious problems remain in the defense of indigents, even where public defender systems are in operation. Nevertheless, this writer must conclude that the public defender system generally offers the best hope of assuring all criminal defendants of effective legal counsel.

The lot of the public defender is not always a happy one. It often happens that those who are unable to help themselves—the "clients" upon whom are lavished all the professional skill and dedication of the defender—are the least deserving of help. Yet

48. The four jurisdictions are the City of Los Angeles, City of Long Beach, City and County of San Francisco, and Alameda County. REPORT, *supra* note 23, at 104.

49. [1958-1959] SAN FRANCISCO CITY AND COUNTY PUBLIC DEFENDER ANN. REP.

public defenders everywhere can find some solace in the words of the California Supreme Court:

This court can take judicial notice, too, that it would be difficult to find in California any lawyers more experienced or better qualified in defending criminal cases than the Public Defender of Los Angeles County and his staff.⁵⁰

50. *People v. Adamson*, 34 Cal. 2d 320, 333, 210 P.2d 13, 19 (1949).

